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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,949	09/22/2003	Theodorus Jozef Goossen	055987-0002	5745

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CANADA

EXAMINER

SHAW, ELIZABETH ANNE

ART UNIT PAPER NUMBER

3644

DATE MAILED: 07/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/664,949

Applicant(s)

GOOSSEN, THEODORUS JOZEF

Examiner

Elizabeth A. Shaw

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8, 11-13 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) 9, 10 and 14 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 and 19 is/are allowed.
- 6) ☒ Claim(s) 1-4, 17, 18 is/are rejected.
- 7) ☒ Claim(s) 5-8, 11, 12, 15 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Sebesta (2,844,912). Sebesta provides a terrarium adapted to be immersed in an aquarium containing water comprising: a shaft means 26 having a first end (unnumbered) and a second end 32; and a receptacle 16 defining at least one wall, the at least one wall having a length and presenting at least one opening, an air exhaust 34 and an interior (unnumbered) wherein the receptacle 16 is connected to the shaft means 26 at the first end (unnumbered) wherein the shaft means 26 at the second end 32 is adapted to anchor 30 the receptacle 16 in the aquarium such that the receptacle 16 is adapted to receive air from an air supply mean (not shown) to define a dry zone in the interior. The opening 34 is adapted to create an airflow in the interior of the receptacle 16 when the air flow exits the receptacle 16 by the air exhaust 34.

Note that statements of intended use or field of use, "adapted to" clauses are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In*

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re Yanush, 177 USPQ 705; In re Finsterwalder, 168 USPQ 530; In re Casey, 512 USPQ 235; In re Otto, 136 USPQ 458; Ex parte Masham, 2 USPQ 2<sup>nd</sup> 1647.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sebesta in view of Youngstrom et al (5,957,085). Sebesta does not show a shaft means extending through the interior of the receptacle. Youngstrom et al show a terrarium 20 adapted to submersion in an aquarium 138 having a receptacle 22 with an interior 38 and a shaft 46 having a first end 88 and a second end (unnumbered), the shaft means 45 being considered to be extending through the interior 38 of the receptacle 22.

***Allowable Subject Matter***

Claims 5-8, 11, 12, 15 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 13 and 19 are allowed.

***Claim Objections***

Claims 13 and 19 are objected to because of the following informalities: capital letters are used throughout the claims other than only at the beginning of the claim.

Appropriate correction is required.

### ***Information Disclosure Statement***

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Included for further reference on terrarium/aquarium combinations are: Gillinder (715,571), Leyva et al (4,204,499), Merritt et al (5,000,118), Partelow et al (5,253,609), Syers (5,337,701), Cass (5,476,068), Townsend (5,476,068), Youngstrom et al (5,957,085) and Lamendola (6,363,889).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. Shaw whose telephone number is 703-308-1853. The examiner can normally be reached on M-Th 9:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

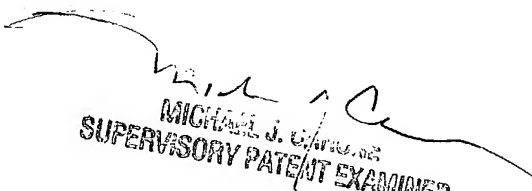
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Elizabeth A. Shaw  
Examiner  
Art Unit 3644

July 9, 2004



MICHAEL J. WILLIAMS  
SUPERVISORY PATENT EXAMINER